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BEFORE THE  
**FEDERAL COMMUNICATIONS COMMISSION**  
WASHINGTON, D.C.

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of:

Implementation of Section 25 of the  
Cable Television Consumer Protection  
and Competition Act of 1992

Direct Broadcast Satellite Public  
Service Obligations

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MM Docket No. 93-25

To: The Commission

**COMMENTS OF MIND EXTENSION UNIVERSITY, INC.**

Mind Extension University, Inc. ("ME/U"), by its attorneys, provides these comments in response to the Notice of Proposed Rule Making in MM Docket No. 93-25, FCC 93-91 (released March 2, 1993) ("NPRM"), relating to the public service obligations of direct broadcast satellite service providers.

Introduction

The NPRM seeks comment on a number of issues raised by Section 25 of the Cable Television Consumer Protection and Competition Act of 1992 ("1992 Cable Act"). That section requires the FCC to adopt rules imposing public interest programming requirements on providers of DBS service, to explore provisions for the principal of localism in DBS, and to establish a reservation of DBS channel capacity for noncommercial programming of an educational or informational nature.

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This latter issue -- dealing with the reservation of DBS channel capacity for educational programming -- is of particular interest to ME/U, which operates a network that provides distance education programs to students through cable and satellite television and through VHS tape distribution. These comments urge the FCC to adopt an inclusive definition of "national educational programming supplier" under Section 25(b)(5)(B) of the 1992 Cable Act, which would allow an entity such as ME/U to qualify for carriage. ME/U also urges the FCC not to adopt an inflexible, narrow interpretation of the term "noncommercial programming of an educational or informational nature" under Section 25(b)(1). The Commission can best serve the public interest by providing reasonable flexibility for bona fide educational entities to seek access to the reserved DBS capacity for the transmission of a wide range of educational and informational programming.

#### Mind Extension University

ME/U is a Colorado corporation, a majority of the stock of which is owned and controlled by Jones Education Networks, Inc.<sup>1/</sup> In association with many of the leading distance education universities across the United States,<sup>2/</sup> ME/U delivers

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<sup>1/</sup> Minority ownership interests in ME/U are also held by Jones Spacelink, Ltd., Jones Intercable, Inc. and Glenn R. Jones.

<sup>2/</sup> The participating universities are California State University, Long Beach; Colorado State University; Emporia State University; George Washington University; Governors State University; Kansas State University; New Jersey Institute of Technology; Oklahoma State University; State University of New York/Empire State College; Pennsylvania State University; Regis University; University of Arizona; University of California Extension,  
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college and graduate level degree programs, interactive instruction for high school students, teachers and administrators, test preparation courses and a complement of personal and professional development courses. The network launched its programming in November of 1987 with the cooperation of its flagship school, Colorado State University, and approximately 50 of Jones Intercable, Inc.'s cable television systems across the country. Programming was initially available for only four hours per day. Thereafter, the network expanded to 12, then 24 hours of educational programming per day. Today, the network is affiliated with more than 800 cable systems and has students and viewers located in all 50 states.

All degrees, programs and courses offered on the network are provided or supported by accredited colleges or universities who contract with ME/U for program distribution and related services. ME/U and its affiliate universities carefully coordinate their separate functions and distinct roles. The universities develop and evaluate programming and provide academic support and credit. ME/U delivers the programs, provides administrative support, and offers student services (such as enrollment, the provision of text books and voice mail, computer bulletin board and other electronic communications services) through the ME/U Education Center.

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2/ (...continued)

Berkeley; University of California, Santa Barbara; University of Maryland, University College; University of New Orleans; University of Oklahoma; University of South Carolina; Utah State University; Washington State University; and Western Michigan University.

The ME/U courses and degree programs are similar to those offered on-campus.<sup>3/</sup> Students pay tuition and enroll in appropriate institutional courses of study through the ME/U Education Center. They take courses by watching video cablecasts. A syllabus from the on-campus professor outlines the expected course work, which may include readings, papers, projects and tests. The completed work is mailed to the professor and students take locally proctored exams arranged by the ME/U Education Center. When students complete all necessary course work, the professors evaluate their performances and submit grades to the registrar's office of the college or university. These grades go on students' permanent academic records and are available on official transcripts from the university. Degrees are awarded by the universities as appropriate. This rigorous process provides a true educational experience to thousands of students throughout the country who might not otherwise have the opportunity to take advantage of campus-based instruction. ME/U believes that this type of educational programming is exactly what Congress had in mind in reserving DBS capacity.

National Educational Programming Supplier

At paragraph 43 of the NPRM, the Commission inquires as to the proper scope of the term "national educational programming supplier," which entities are authorized by Section 25(b) of the 1992 Cable Act to seek access to the reserved DBS channel capacity. The FCC properly notes that Section 25(b)(5)(B) defines national

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<sup>3/</sup> Attached is the ME/U Summer Semester, 1993 Course Offerings, which illustrate the wide range of undergraduate, graduate and continuing education courses carried on the network.

educational programming supplier to include qualified noncommercial educational

national basis. ME/U serves a valuable role as a middleman or agent of its affiliated institutions, providing the organizing function and the structural and administrative support, as well as the channels of distribution, that enable the institutions to function as national educational programming suppliers as contemplated by Congress. To effectuate Congress' intent in Section 25(b) of the 1992 Cable Act, educational institutions should be free to determine that their programming is most effectively distributed as part of a network of institutions, even if the network is operated by some other entity. The Commission should thus regard entities such as ME/U as being included within the eligible status of the educational institutions with which they are affiliated.

Second, the definition of national educational programming suppliers in Section 25(b)(5)(B) as articulated by Congress does not describe the characteristics or functions of eligible entities, but enumerates examples of types of entities that would be eligible. Thus, the term national educational programming supplier "includes" noncommercial educational television stations, other public telecommunications entities and educational institutions. ME/U believes that, by using the word "includes" rather than exclusive language (such as "shall be" or "includes only"), Congress was intending to provide a non-exclusive list of examples to give the Commission guidance in adopting its own eligibility standards.<sup>5/</sup> In view of ME/U's demonstrated pioneering dedication to

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5/ The Supreme Court has long held that statutory construction principles such as expressio unius est exclusio alterius ("the expression of one is the exclusion of others") are subordinated to the doctrine that courts will construe the details of an act in conformity with its dominating general purpose, and will interpret the text so far as the  
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the effective national distribution of educational programming, and its success in doing so, it should certainly be regarded as coming within the scope of the statute.

Noncommercial Educational and Informational Programming

In paragraph 44 of the NPRM, the Commission also seeks comment on whether it is necessary to define the term "noncommercial educational and informational programming" for which DBS capacity is to be reserved and, if so, what that term should include. ME/U's view is that the FCC should not, at least at this time, adopt any definition of the term that would result in an inflexible or narrow interpretation of the type of programming qualifying under the statute.

The statutory term "noncommercial programming of an educational or informational nature" is very broad. It clearly encompasses for-credit instruction, but just as clearly includes non-credit educational programming. The reference to "informational" programming seems as well to include programming outside of a strict instructional or educational context. This easily encompasses such uses as how-to programs, talk shows, documentaries, news and public affairs programs, cultural programs, coverage of current events, and even teleconferences or program scheduling

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5/ (...continued)

meaning of the words fairly permits so as to carry out the generally expressed legislative policy. See Securities and Exchange Commission v. C. M. Joiner Leasing Corp., 320 U.S. 344, 350-51 and n. 8 (1943); Herman and MacLean v. Huddleston, 459 U.S. 387 (1983) at 387 n. 23. In the administrative context in particular, the maxim noted above has been found to be of "little force." See Texas Rural Legal Aid v. Legal Services Corp., 90 F.2d 685, 694 (D.C. Cir. 1991), and the cases cited therein.

and other administrative information. There may well be other types of qualifying programming.

Rather than try to articulate categories of acceptable programming, ME/U suggests that the Commission simply promulgate regulations that carry forward the statutory language. Obviously, Congress has required that the programming be noncommercial,<sup>6/</sup> and the Commission might want to define that limitation consistent with Section 399B of the Communications Act and the standards set forth in Sections 73.503 and 73.621 of the rules (governing noncommercial educational radio and television stations). Beyond that, ME/U suggests that the FCC allow educational and informational programming in the DBS service to proceed without restrictive definition in order to encourage the development of this kind of programming. If necessary, based on the experience of actual usage patterns, the Commission can step in at a later time to limit or prioritize eligible programming. This might be necessary, for example, if the amount of educational and informational usage comes to exceed the capacity reserved under the regulations adopted in this proceeding.

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<sup>6/</sup> ME/U's current program format includes occasional commercials. If it seeks access to reserved DBS capacity, ME/U understands that paid-for promotional announcements will have to be deleted.

Conclusion

ME/U urges the FCC to adopt rules consistent with these comments.

Respectfully submitted,

**MIND EXTENSION UNIVERSITY, INC.**

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